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Ms. Marlene H. Dortch
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Federal Communications Commission
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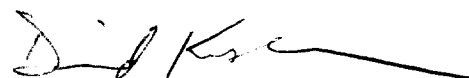
**Re: In the Matter of Amendment of Section 73.606(b), Table of Allotments,
Television Broadcast Stations, and Section 73.622(b),
Table of Allotments, Digital Television Broadcast Stations
(Columbia and Edenton, North Carolina)
MB Docket No. 04-289
RM-10802**

Dear Ms. Dortch:

Enclosed please find, on behalf of The University of North Carolina, the original and four copies of the Response of The University of North Carolina to Late-Filed Comments of EchoStar for filing in the above-referenced matter.

If any questions should arise during the course of your consideration of this matter, it is respectfully requested that you communicate with the undersigned.

Sincerely,



David Kushner
Counsel to The University of North Carolina

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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*Federal Communications Commission
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In the Matter of)	
)	
Amendment of Section 73.606(b),)	MB Docket No. 04-289
Table of Allotments,)	RM-10802
Television Broadcast Stations, and)	
Section 73.622(b), Table of Allotments)	
Digital Television Broadcast Stations)	
(Columbia and Edenton, North Carolina))	

To: Chief, Video Division
Media Bureau

**RESPONSE OF THE UNIVERSITY OF NORTH CAROLINA TO
LATE-FILED COMMENTS OF ECHOSTAR**

The University of North Carolina ("UNC"), licensee of noncommercial Television Stations WUND-TV, Channel 2, and WUND-DT, Channel 20, Columbia, North Carolina (collectively, "WUND"), hereby responds to the late-filed comments of EchoStar Satellite, L.L.C. ("EchoStar") filed on October 27, 2004, in the above-referenced proceeding.¹

EchoStar's Comments should be stricken from the record. They contain multiple misstatements of the facts and the law, and they were improperly filed out of time without so much as a request for leave. Of course, this abuse of process is nothing new for EchoStar which has an

¹ Given the nature of EchoStar's Comments, as explained below, UNC ought to be entitled to an opportunity to respond since EchoStar failed to participate in the proceeding during the publicly-announced comment filing period. Should the Commission deem it necessary for UNC to request leave to submit this Response, then UNC hereby respectfully makes such a request and moves that this Response be accepted. EchoStar makes numerous factual and legal misstatements, and UNC should have the opportunity to correct these unfounded misstatements so that the Commission will have before it all of the information necessary for it to make an appropriate public interest determination.

unenviable reputation for abusive tactics, both at the Commission and in the courts.² There is simply no reason for the Commission to stand for it any longer.

Procedurally, the Commission should simply refuse to accept EchoStar's late-filed Comments. The Commission released the *Notice of Proposed Rule Making* in this proceeding on August 6, 2004. Comments were due on September 27, 2004; reply comments were due on October 12, 2004. Without good cause—indeed, without even any “cause” at all—EchoStar filed its Comments a full month after the comments due date and even more than two weeks after the

² EchoStar has been cited repeatedly by the Commission for abusive tactics. In one instance, the Commission imposed the “maximum allowable fine” on EchoStar, and another order cited numerous instances in which it had imposed sanctions on EchoStar for having abused the agency's processes, noting that EchoStar had demonstrated a lack of “candor,” had engaged in “misconduct,” had committed “continuing violations” of FCC rules, and had advanced “disingenuous” arguments before the Commission. See *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp.*, FCC 02-284 (released Oct. 18, 2002), at ¶ 29 n.122; *EchoStar Satellite Corp. v. Young Broadcasting*, 16 FCC Rcd 15070 (2001), at ¶ 12 (admonishing EchoStar for “abuse of process”); *National Ass'n of Broadcasters and Ass'n of Local Television Stations; Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, 17 FCC Rcd 6065 (2002), at ¶ 37 n.116 (cataloguing extensive list of EchoStar's “‘disingenuous’ behavior and lack of candor”).

Courts have also repeatedly cited EchoStar for its misconduct. See *CBS Broadcasting Inc. v. EchoStar Communications Corp.*, 276 F. Supp. 2d 1237 (S.D. Fla. 2003), ¶ 46 (finding that EchoStar had knowingly broken a sworn promise to the court); *CBS Broadcasting, Inc. v. EchoStar Communications Corp.*, No. 02-N-1434 (PAC) (D. Colo. Sept. 1, 2004), at 2 (finding that EchoStar had made a “patently frivolous” argument that was a “waste of time and resources” and characterizing EchoStar as a “vexatious litigant”); *CBS Broadcasting Inc. v. EchoStar Communications Corp.*, Misc. Nos. 02-400, 02-402, Memorandum Order (W.D. Pa. Apr. 17, 2003) (sanctioning EchoStar for discovery abuses); *id.*, Order (W.D. Pa. Apr. 27, 2003) (awarding attorney's fees and costs against EchoStar); *EchoStar Satellite Corp. v. NDS Group PLC*, No. SACV 03-0950 DOC (ANx), Civil Minutes (C.D. Cal. July 21, 2004) (finding that EchoStar's intentionally “vague and misleading” pleading, which amounted to “purposeful vagueness,” “suggest[ed] bad faith on the part of” EchoStar); *EchoStar Satellite Corp. v. Brockbank Ins. Servs.*, No. 00-CV-1513, Order and Judgment (D. Colo. Sept. 26, 2002) (sanctioning EchoStar for filing frivolous lawsuit and awarding attorney's fees against EchoStar); *id.* No. 00-MK-1513 (PAC), Order Declining to Adopt Magistrate Judge's Recommendations, and Instead Imposing Sanctions Under the Court's Inherent Authority (D. Colo. Feb. 5, 2004), at 23 & n.17 (finding that EchoStar's misconduct “rose to the level of conscious wrongdoing” and citing the *Young Broadcasting* case from the Commission).

reply comments due date. And it did so without asking for leave to submit late comments, as is required by Section 1.415(d) of the Commission's Rules.³ In contested allotment proceedings, the Commission routinely refuses to accept late-filed comments, especially when they are submitted without a request for leave to accept them.⁴

Substantively, and quite critically, there is no basis for EchoStar's late-filed Comments. EchoStar falsely asserts—twice—that WUND does not “air any program that could be deemed local to the Norfolk market.” EchoStar's Late-Filed Comments at 2; *id.* at 3 (virtually identical). The assertion is demonstrably **false**. UNC included in its opening Comments a 7-page exhibit detailing the programming in the past year alone directed specifically towards the nine North Carolina counties that are located in the Norfolk market. *See* UNC's Comments, Exhibit 4. This material was

³ Nor did EchoStar seek an extension of time in which to file comments, as contemplated by 47 C.F.R. § 1.46(b).

⁴ *See, e.g., Hardinsburg, Kentucky*, 7 FCC Rcd 1746 (1992), ¶ 8 (stating that a “party who fails to submit available information to the Commission during the appropriate comment or reply period does so to his own detriment,” and refusing to consider late-filed comments where the party “attempts to force the Commission to consider information which [the party] had available to him at the time of his submitting initial comments but did not deem necessary until the petitioner had filed timely reply comments” and where the filing was unaccompanied by a “motion for leave to file late comments and without an explanation for the need of these comments”); *Bethel Springs, Martin, Tiptonville, Trenton, and South Fulton, Tennessee*, 16 FCC Rcd 20329 (2001), ¶¶ 2-4 (refusing to accept late-filed comments 23 days late not accompanied by a request for their acceptance and noting prejudice to other party were they to be accepted); *Big Spring, Sterling City, and Coahoma, Texas*, 7 FCC Rcd 4834 (1992), ¶ 2 n.5 (refusing to accept late-filed comments not accompanied by a request for their acceptance); *Greenwood, Arkansas*, 5 FCC Rcd 3498 (1990), ¶ 1 n.3 (refusing to accept late-filed comments not accompanied by a request for their acceptance); *Los Ranchos de Albuquerque, Los Alamos, Corrales, and Armijo, New Mexico*, 2 FCC Rcd 4735 (1987), ¶ 1 n.4 (refusing to accept late-filed comments not accompanied by a request for their acceptance); *see also Rockport, Gregory, Alice, and Armstrong, Texas*, 4 FCC Rcd 8075 (1989), ¶ 1 n.3 (refusing to accept late-filed comments); *Waterbury and Royalton, Vermont*, 4 FCC Rcd 5530 (1989), ¶ 1 n.5 (refusing to accept late-filed comments); *cf. Julian, California*, 57 Rad. Reg. 2d (P & F) 1325 (1985) (upholding Bureau decision denying an extension of time of one day and noting that the late-filed pleading was unacceptable even as late-filed comments). These cases are merely illustrative; there are dozens more like them.

already in the record, and there is simply no reason, rationale, or excuse for EchoStar to make such a conspicuously false statement of fact. EchoStar has either failed to read the pleadings, or it has read them but elected to ignore them in the hope that the Commission might as well.

EchoStar also incorrectly asserts—in three instances, no less—that of the “352,727 cable subscribers in Virginia within the Norfolk television market, *none* . . . currently receive WUND, even though a number of cable systems lie within WUND’s Grade B contour.” EchoStar’s Late-Filed Comments at 4 (emphasis as in original); *id.* at 5 (same assertion); *id.*, Exhibit 1 (table incorrectly stating that WUND is not carried on any Virginia cable system in the Norfolk market). This assertion is also **false**. In fact, WUND has been carried by Cox since August 2001 on the *largest* cable system in the Norfolk market, through its Southside headend serving the major cities of Norfolk, Virginia Beach, Portsmouth, and Chesapeake. Cox’s Southside headend serves some 270,000 cable subscribers, and each of these subscribers receives UNC-TV’s programming from WUND, which feeds the cable head-end over the air.⁵ See Second Declaration of Carl Davis (attached hereto); Cox Hampton Roads—Southside Channel Lineup *available at* <<http://www.cox.com/hr/cable/channel-lineup-southside.asp>> (showing that UNC-TV is shown on Channel 6 of Cox’s basic cable service lineup) (attached hereto as Exhibit 11⁶); Cox Hampton Roads—Channel Lineup *available at* <<http://www.cox.com/hr/cable/channel-lineup.asp>> (showing that the Southside headend serves Virginia Beach, Norfolk, Portsmouth, Chesapeake, as well as a

⁵ UNC has also timely requested mandatory carriage on Charter’s Suffolk County systems, but Charter has been unable to comply to date due to peculiar technical difficulties unrelated to the quality of WUND’s signal. The Cox and Charter systems are the only cable systems in the Norfolk market for which WUND qualifies for mandatory carriage, and UNC has, therefore, asserted its carriage rights to the maximum extent permitted by law.

⁶ Exhibit numbering continues from UNC’s Comments, Reply Comments, and Supplement.

portion of Currituck County, North Carolina) (attached hereto as Exhibit 12). **Therefore, more than 75% of all cable subscribers in the Norfolk market located in Virginia do, in fact, receive WUND.** Satellite carriage of WUND in the market would, therefore, serve to provide parity with cable for satellite subscribers.

Indeed, EchoStar's assertions with respect to WUND's cable carriage are simply incorrect and misleading time and again. EchoStar's Exhibit 1 is suffused with error. Not only does EchoStar mischaracterize 75% of WUND's cable viewership in *Virginia*, but EchoStar leaves out eight cable systems in the Nine County Area in *North Carolina*—all of which carry WUND—serving more than an additional 27,000 households. As UNC had already informed the Commission, and as was available in the record to EchoStar, there are nearly 50,000 cable subscribers in the Nine County Area in North Carolina that are located in the Norfolk market—not the mere 22,135 that EchoStar misleadingly claims. *See* UNC's Comments at 14 & n.9. In other words, EchoStar undercounted cable subscribership and, thus, WUND cable viewership in the Nine County Area by more than 55%. A thorough and correct analysis of cable carriage of WUND is provided as Exhibit 13 hereto. Because EchoStar's data source for its Exhibit 1 is the same as UNC's data source for its Comments, and now for its Exhibit 13, namely the 2004 edition of the *Television & Cable Factbook*, EchoStar's repeated misstatements of fact tend to "suggest[] bad faith on the part of" EchoStar,⁷ rising "to the level of conscious wrongdoing."⁸

⁷ *EchoStar Satellite Corp. v. NDS Group PLC*, No. SACV 03-0950 DOC (ANx), Civil Minutes (C.D. Cal. July 21, 2004) (finding that EchoStar's intentionally "vague and misleading" pleading, which amounted to "purposeful vagueness," "suggest[ed] bad faith on the part of" EchoStar).

⁸ *EchoStar Satellite Corp. v. Brockbank Ins. Servs.*, No. 00-MK-1513 (PAC), Order Declining to Adopt Magistrate Judge's Recommendations, and Instead Imposing Sanctions Under (continued...)

Unfortunately, EchoStar's misstatements of fact are accompanied by an equally misleading mischaracterization of the law. EchoStar claims that WUND's proposal to change its community of license to Edenton "violates the Satellite Home Viewer Improvement Act (SHVIA)." EchoStar's Late-Filed Comments at 3. Not only is this statement **false**, but it borders on the nonsensical. EchoStar fails to point to a *single* provision of SHVIA that WUND's proposal violates.

It is clear on its face that WUND's proposal to have its community of license reallocated to Edenton is absolutely *not* a request to enlarge or modify the Norfolk market. Edenton is already located in the Norfolk market. If WUND sought to add its current community of license, Columbia, to the Norfolk market, *that* would be a request to modify the Norfolk market. Obviously, its actual proposal is nothing of the sort. Neither SHVIA nor any other law or regulation prohibits WUND from seeking to amend the Television Tables of Allotment, which is all WUND has done here, fully in accordance with 47 C.F.R. § 1.420. EchoStar's argument borders on the frivolous, but, again, that is not unusual for EchoStar which has just been chastised by a federal court in September 2004 for similar behavior.⁹

Compounding EchoStar's false characterization of the law is EchoStar's assertion that "[c]hanging WUND's city of license to a city within the Norfolk market would further violate SHVIA by granting carriage rights on DBS that far exceed those enjoyed by WUND on cable systems." EchoStar's Late-Filed Comments at 4. This claim, too, is **false**. WUND is entitled to

⁸(...continued)
the Court's Inherent Authority (D. Colo. Feb. 5, 2004), at 23 & n.17 (finding that EchoStar's misconduct "rose to the level of conscious wrongdoing").

⁹ *CBS Broadcasting, Inc. v. EchoStar Communications Corp.*, No. 02-N-1434 (PAC) (D. Colo. Sept. 1, 2004), at 2 (finding that EchoStar had made a "patently frivolous" argument that was a "waste of time and resources").

cable carriage in the Norfolk market in some 320,000 cable households, 50,000 in North Carolina and 270,000 in Virginia south of the Chesapeake Bay. Therefore, not only is changing WUND's community of license to Edenton not a violation of SHVIA, but WUND's cable carriage rights in the Norfolk market actually far exceed those that it would enjoy on satellite. As of August 2004, there were less than 60,000 DBS customers in the Norfolk market subscribing to the local channels package.¹⁰ Hence, WUND's satellite carriage rights would amount to less than 20% of the cable carriage rights currently enjoyed by WUND.

In fact, EchoStar's argument is exactly backward. If, as EchoStar claims, "Congress intended DBS carriage of television stations to mirror cable carriage as much as practicable," EchoStar's Late-Filed Comments at 4; *see also id.* at 5 ("Congressional intent that DBS carriage rules mirror to the extent possible the cable rules"), then WUND's Petition must be granted by the Commission, not denied as EchoStar would have it. EchoStar is claiming for itself the right to avoid the very carriage obligations that its cable brethren are subject to. Somehow EchoStar thinks that avoiding this legal obligation gives it a competitive advantage, but EchoStar's own policy argument, when seen in the correct factual context—not the false factual context that EchoStar has attempted to paint—illustrates precisely why WUND's Petition ought to be granted: It is only local-into-local DBS subscribers who are being denied WUND's programming, not over-the-air viewers or cable subscribers. It is, thus, these very DBS customers—many of whom have paid taxes that underwrite WUND's programming—who are being discriminated against as a result of the market-drawing powers of a non-governmental third party. This is why WUND's Petition is in the public interest

¹⁰ *See* UNC's Supplement, Skoog Declaration & Exhibit A (filed Oct. 29, 2004) (indicating that, as of August 2004, there were 59,671 local-into-local DBS subscribers in the Norfolk DMA as determined by independent third party Decisionmark).

and should be granted.

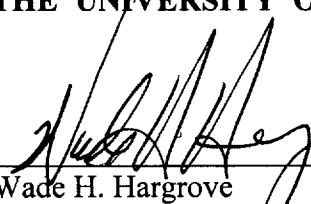
Lastly, EchoStar's argument concerning whether the proposed change in community of license for WUND satisfies the Commission's allotment priorities, *see* EchoStar's Late-Filed Comments at 5-9, has already been fully argued by opposing parties UNC and Hampton Roads. As EchoStar merely rehashes arguments already made, it presents nothing new of decisional significance, and UNC will rely on its previous pleadings in this proceeding.

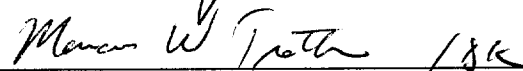
Conclusion


For the foregoing reasons, the Commission should reject EchoStar's late-filed Comments. If, however, the Commission were to consider EchoStar's Comments, then the Commission should also consider the correct data included in this Response which show, unequivocally, that WUND's community of license should be reassigned to Edenton so that cable and satellite carriage obligations in the Norfolk market are harmonized and DBS subscribers in North Carolina's Nine County Area are no longer denied access by satellite to WUND's public broadcast programming.

Respectfully submitted,

THE UNIVERSITY OF NORTH CAROLINA



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Marcus W. Trathen

David Kushner

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Its Attorneys

November 19, 2004

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.606(b),)	MB Docket No. 04-289
Table of Allotments,)	RM-10802
Television Broadcast Stations, and)	
Section 73.622(b), Table of Allotments)	
Digital Television Broadcast Stations)	
(Columbia and Edenton, North Carolina))	

SECOND DECLARATION OF CARL DAVIS

1. I, Carl Davis, declare that I am more than eighteen (18) years old and am under no disability. I have personal knowledge of the matters set forth in this Declaration, and I am competent to testify to them.

2. I am the Assistant General Manager and Director of Engineering of UNC-TV, authorized by the Board of Governors of The University of North Carolina to operate the UNC-TV statewide public educational television network, including Television Station WUND, Columbia, North Carolina.

3. I previously submitted a Declaration in this proceeding on September 24, 2004.

4. WUND has asserted its must-carry rights on every cable system within its Grade B contour, regardless of whether that cable system is located in North Carolina or Virginia. To the best of my knowledge and information, WUND is, consequently, carried on each such cable system, with one exception. Thus, WUND is carried on all of the cable systems in North Carolina in the Norfolk DMA, which is comprised of the counties of Camden, Chowan, Currituck, Dare, Gates, Hertford, Northampton, Pasquotank, and Perquimans (the "Nine County Area"). Total cable viewership of WUND in the Nine County Area is approximately 50,000 cable households. In addition, WUND is carried by Cox in the Norfolk DMA in all of the Virginia communities south of the Chesapeake Bay and James River which are served by Cox's Southside headend. These communities include the major cities of Norfolk, Virginia Beach, Portsmouth, and Chesapeake. The one exception noted above is the Charter system serving Suffolk County in Virginia. Although WUND has made a timely request for mandatory carriage, for technical reasons unrelated to the quality of the WUND signal, Charter has been unable to launch WUND on its Suffolk system.

5. Upon inquiry of Cox, I have been informed, and therefore believe, that Cox's Southside headend in the Norfolk DMA serves approximately 270,000 households. WUND has

been carried by this Cox system since August 2001. WUND is retransmitted on Channel 6 on the Cox system. WUND delivers its signal to the Southside headend over the air.

6. Based on the best information available to me, WUND is available to nearly 320,000 cable households in the Norfolk DMA alone.

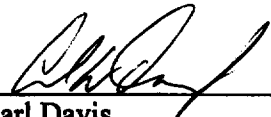
7. The carriage of UNC's WUND in cable communities outside of North Carolina is not only not unusual, but is the rule. For example, UNC-TV, through one of its state-wide networked television stations is carried in the Greenville, South Carolina, market in the South Carolina counties of Greenville, Spartanburg, and Pickens and in the Charlotte market in the South Carolina counties of York, Chester, and Lancaster. Other examples of carriage in non-North Carolina counties include several South Carolina counties in the Myrtle Beach-Florence, South Carolina, market and Virginia counties in both the Raleigh market and the Greensboro market.

8. I have reviewed the table titled "Cable System Carriage of WUND in the Nine County Area," which is attached as Exhibit 13 to the Response to EchoStar's late-filed Comments, and it is complete and accurate to the best of my information, knowledge, and belief.

[Signature appears on following page.]

The undersigned, under penalty of perjury, declares the foregoing to be true, complete, and correct to the best of his personal knowledge.

This, the 5th day of November, 2004.



Carl Davis

Exhibit 11

[Cox Hampton Roads—Southside Headend Channel Lineup]



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3	WTKR CBS	44	C-Span
4	WSKY	45	C-SPAN 2
5	LNC 5	46	Government / Educational Access
6	UNC-TV	47	Government / Educational Access
7	WGNT UPN	48	Government / Educational Access
10	WAVY NBC	49	WPXV PAX
11	WCOX	50	QVC
13	WVEC ABC	72	WGN
14	WVBT Fox	73	Univision
15	WHRO PBS	75	TV Guide Channel

Cox Expanded Service





































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 17 Cartoon Network	 41 E!
 18 USA Network	 55 AMC
 19 ABC Family Channel	 56 Spike TV
 22 MTV	 57 Court TV
 23 MSNBC	 58 Discovery Health Channel
 24 Weather Channel	 59 History Channel
 25 CNBC	 60 ESPN 2
 26 CNN Headline News	 61 Bravo
 27 HGTV	 62 Travel Channel
 28 A & E Network	 63 Speed Channel
 29 Nickelodeon	 64 Fox News Channel
 30 The Learning Channel	 65 Home Shopping Network
 31 Discovery Channel	 66 TNT
 32 Comedy Central	 67 VH1
 33 CMT	 68 Food Network
 34 Outdoor Life	71 Cable MarketPlace
 35 Comcast SportsNet	74 Information MarketPlace
 36 BET	 77 Shop At Home

Premium Service

 20 HBO2	 53 Encore (Mini Premium Service)
 21 HBO	 54 STARZ!
 51 Cinemax	 69 Showtime
 52 MoreMax	 70 The Movie Channel

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Exhibit 12

[Cox Hampton Roads—Southside Headend Service Areas]



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Analog Channel Lineup

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Exhibit 13

[Cable System Carriage of WUND in the Nine County Area]

CABLE SYSTEM CARRIAGE OF WUND IN THE NINE COUNTY AREA

County	Population ¹	Principal Areas Served	Cable MSO	Cable Households	Carry WUND
Camden	6,885	Camden	Mediacom	909	Yes
Chowan & Perquimans	25,894	Edenton, Perquimans, Hertford, Winfall	Mediacom	4,165	Yes
Currituck	18,190	Currituck, Aydlett, Church's Island, Coinjock, Grandy, Harbinger, Jarvisburg, Mamie, Olds, Point Harbor, Poplar Branch, Powells Point, Walnut Island, Water View Shores, Waterlilly	Mediacom	3,225	Yes
Currituck		Corolla	Charter	2,120	Yes
Currituck ²		Knotts Island, Gibbs Woods	Cox	406	Yes
Dare	29,967	Manteo, Colington, Duck, Kill Devil Hills, Kitty Hawk, Manns Harbor, Nags Head, Southern Shores, Stumpy Point, Wanchese	Charter	17,250	Yes
Dare		Buxton, Avon, Frisco, Hatteras, Rodanthe, Salvo, Waves	Charter	3,497	Yes
Gates	10,516	Gatesville	Charter	296	Yes
Hertford	22,601	Hertford County, Winton, Ahoskie	Adelphia	3,378	Yes
Hertford		Southern portion of Hertford County	Adelphia	<459	Yes
Hertford		Murfreesboro	Adelphia	1,636	Yes
Northampton	22,086	Rich Square, Woodland	Mediacom	<1,486	Yes
Northampton		Conway, Galatia, Seaboard, Severn	Mediacom	910	Yes
Pasquotank	34,897	Pasquotank County, Elizabeth City	Adelphia	10,162	Yes
Total	171,036³			49,899⁴	

Source: *Television & Cable Factbook*, Volume 72, Cable Volume 1 (2004).

[Notes appear on the following page.]

Notes:

1. County population figures are 2000 Census data.
2. See *Complaint of Joan and Kenneth Wright*, CSR-5309-M, DA 99-232 (released Jan. 26, 1999), at ¶ 4 (noting that Cox had asserted that its Hampton Roads cable system serves 406 subscribers in Knotts Island and Gibbs Woods in Currituck County, North Carolina).
3. There are 66,931 households in the Nine County Area.
4. Because two of the cable systems serving portions of Hertford and Northampton counties also serve areas outside of the Nine County Area, the total number of cable subscribers in the Nine County Area is slightly less than 49,899 but must be more than 48,000.

* * *

Certificate of Service

The undersigned, of the law firm of Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., hereby certifies that s/he has caused a copy of the foregoing **Response of The University of North Carolina to Late-Filed Comments of EchoStar** to be placed in the U.S. Mail, first-class postage prepaid, addressed as follows:

Chairman Michael K. Powell[†]
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy[†]
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Michael J. Copps[†]
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Commissioner Kevin J. Martin[†]
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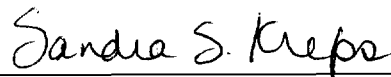
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This the 19th day of November, 2004.



[†] Via hand-delivery